IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

WILLIAM VON FRIEWALDE, DAVE	§	
HARTMAN, MARK COMPAS and	§	
ROBERT BEVINS,	§	
	§	
Plaintiffs	§	
	§	
v.	§	CA. NO SA06CA0236-OG
	§	
BOEING AEROSPACE OPERATIONS,	§	
INC.,	§	
	§	
Defendant.	§	

NOTICE OF ACCEPTANCE OF SECOND OFFER OF JUDGMENT TO JESUS LOZANO

- 1. One of the Plaintiffs is Jesus Lozano ("Lozano"). Defendant is Boeing Aerospace Operations, Inc. ("Boeing").
- 2. Plaintiff Lozano among others, sued Boeing for violations of the Fair Labor Standards Act (FLSA).
- 3. Defendant served a separate and unconditional second offer of judgment, attached as Exhibit "A", on plaintiff Lozano on May 17th, 2010, which is more than ten (10) days before trial.
- 4. As authorized by Federal Rule of Civil Procedure 68, plaintiff Lozano accepts defendant's offer of judgment as to Lozano and asks that the clerk enter judgment in accordance with the offer with attorneys fees to be determined by the Court.

5. Notwithstanding defendant Boeing's unilateral self-serving recitations concerning the implications and effect of it's Offer of Judgment such recitations are of no moment, do not change the law on this issue and are mere surplusage that should be stricken.

Dated and signed this 17th day of May, 2010.

Respectfully submitted,

THE POWELL LAW FIRM
Jon Powell, SBN 00797260
115 East Travis Street, Suite 535
San Antonio, Texas 78205
210-225-9300 - Telephone
210-225-9301 - Facsimile

-and-

SPEIGHTS LAW FIRM LLP Jason Speights 825 W. Bitters Road, Suite 104 San Antonio, Texas 78216 210-495-6789 - Telephone 210-495-6790 - Facsimile

-and-

LAW OFFICES OF PHILIP R. RUSS Philip R. Russ Felipe Zavala 2700 S. Western, Suite 1200 Amarillo, Texas 79109 (806) 358-9293 - Telephone

(806) 358-9296 - Facsimile

Philip R. Russ, SBN 17406000

CERTIFICATE OF SERVICE

I hereby certify that on the day of May, 2010, I electronically filed the foregoing "Notice of Acceptance of Second Offer of Judgment to Jesus Lozano" with the Clerk of the Court for the Western District of Texas, by using the CM/ECF system which will-send a notice of electronic filing to all parties who have appeared and registered with CM/ECF.

Philip R. Russ

Exhibit "A"

IN THE UNITED STATE DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

WILLIAM VON FRIEWALDE,
DAVE HARTMAN, MARK COMPAS,
AND ROBERT BEVINS, ET AL.,
§

Plaintiffs,

V.

§ C.A. NO. SA06CA0236-OG

§

§ §

§

BOEING AEROSPACE OPERATIONS, INC.

Defendant.

DEFENDANT'S SECOND OFFER OF JUDGMENT TO PLAINTIFF JESUS LOZANO

Defendant Boeing Aerospace Operations, Inc. ("Boeing"), pursuant to FED. R. CIV. P. 68, makes this Second Offer of Judgment ("Offer") against it in favor of Plaintiff Jesus Lozano ("Lozano") in the amount of \$3,537.18, plus additional sums for accrued costs and reasonable attorneys' fees, if any, recoverable under 29 U.S.C. § 216(b), as determined by the Court. This Offer of Judgment is based upon the calculation of alleged unpaid overtime as specified by Lozano in his sworn declaration dated November 20, 2009, and without admitting the accuracy thereof. This Offer is expressly conditioned on the Court entering judgment on this FED. R. CIV. P. 68 Offer and dismissing with prejudice all claims asserted by Lozano against Boeing.

The Offer will remain open for ten (10) days after the date of service and must be accepted in writing by Lozano. The Offer is made solely and expressly for the purpose of settlement and shall not, whether accepted or rejected, be construed as an admission of

liability by Boeing. Boeing has denied and continues to deny all of the allegations made by Lozano, and expressly denies any liability therefore. An acceptance of the Offer by Lozano shall not constitute a judgment on the merits of the claims against Boeing, nor a finding of liability against Boeing, and shall not be admissible as evidence in any proceeding. See Doc. No. 125.

If the Offer is not accepted by written notice, it shall be deemed withdrawn and shall not be admissible as evidence in any hearing, except in a proceeding to determine costs and recoverable attorneys' fees, if any. If any judgment finally obtained by Lozano is not more favorable than this Offer, Lozano must pay Boeing's costs incurred after the date of this Offer.

Dated this 17th day of May, 2010.

Respectfully submitted.

FIGARI & DAVENPORT, L.L.P.

Gary D. Eisenstat

State Bar No. 06503200

Keith R. Verges

State Bar No. 20547650

Amanda D. Sotak

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ATTORNEYS FOR DEFENDANT BOEING AEROSPACE OPERATIONS, INC.

CERTIFICATE OF SERVICE

On the 17th day of May, 2010, the foregoing instrument was sent by facsimile to counsel for Jesus Lozano, Philip R. Russ, Law Offices of Philip R. Russ, 2700 South Western, Suite 1200, Amarillo, Texas 79109, Jon Powell, The Powell Law Firm, 115 East Travis Street, Suite 535, San Antonio, Texas 78205, and Jason Speights, Speights Law Firm, LLP, 825 W. Bitters Road, Suite 104, San Antonio, Texas 78216.

Gary D. Ejsenstat